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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
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In the Matter of

Petition for Declaratory Ruling, Special Relief, and
Institution of Rulemaking by
America's Carrier's Telecommunication Association

RM No. 8775

Re: The Provision of Interstate and International
Interexchange Telecommunications Service Via the
"Internet" By Non-Tariffed, Uncertified Entities

REPLY COMMENTS OF LDDS WORLDCOM

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June 10, 1996

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SUMMARY

Nearly every one of several hundred commenters in this proceeding agree with LDDS WorldCom that telephony voice services provided over the Internet should not be subject to regulation or outright prohibition by the FCC. Commenters strongly oppose subjecting Internet telephony services to any tariff filing or federal certification requirements, as well as any prohibition on providing telephony services over the Internet. To the extent that ACTA's petition seeks such extreme measures, the Commission should reject that portion of the petition out of hand.

Nonetheless, rejecting regulation of the Internet does not end the inquiry. Many commenters join LDDS WorldCom in articulating the fundamental principle that all users of the public switched telephone network should be required to pay their fair share of the charges necessary to interconnect with that network. Currently, local exchange carriers are not assessing Internet telephony services the same interstate access charges and universal service contribution that other telecommunications carriers are now required to pay. As a result, VON services are being priced at artificially low levels without including those charges, and other end users of the public network are being forced to subsidize those VON services.

A number of commenters urge the FCC to bring a swift end to the blatantly discriminatory and anticompetitive subsidization of VON services. One option is to deal with the issue as part of the Commission's comprehensive reforms of its access charge and universal service regimes. There, all users seeking to interconnect with local exchange networks to utilize telecommunications services -- including VON services -- would be required to pay cost-based access charges and a fair share of universal service contribution. By adding VON services to the pool of telecommunications services that are subject to these federal charges, there will be

no further reason for the Commission to take any regulatory measures regarding VON services.

The ongoing subsidization of VON services is not a trivial matter. Many commenters agree with LDDS WorldCom that, given the rapid pace of technological progress and deployment, Internet telephony services and traditional long distance services are quickly becoming interchangeable. Other commenters note that there are over one million users of VON services now, with tens of millions more sure to follow.

Many Internet providers and others claim that VON service is not at all like traditional telephony service because it requires a computer-to-computer link that never allows the end user to connect with the public switched telephone network to terminate Internet calls to a regular telephone. This assertion is demonstrably false. LDDS WorldCom showed in its initial comments that several major companies have released commercial software packages over the past several months that allow voice communications to cross over from the Internet computer network to the public switched network. These new services allow customers, for the first time, to make computer-to-telephone and telephone-to-telephone VON calls interconnected with the public switched network, without paying any interstate access charges, universal service contribution, or international accounting rates. Press releases, news articles, and first-hand accounts all support LDDS WorldCom's basic point that these computer-to-telephone and telephone-to-telephone VON services are now commercially available and in actual use. It is this unprecedented marriage of Internet services and the public switched telephone network that must spur the Commission to remedy the inequitable cost structure underlying VON services, and so protect the public switched network from the significant and growing dangers of uneconomic bypass.

Other parties agree with LDDS WorldCom that the current subsidized pricing of Internet telephony services improperly exploits the temporary ESP exemption from access charges in a discriminatory and anticompetitive fashion. In fact, VON is not an enhanced service. Commenters point out that VON services also currently avoid other legitimate fees, including international accounting rates and universal service contribution. Commenters stress in particular that consumers will be severely harmed if VON services are not required to pay their fair share of charges to interconnect with the local network. As more and more traditional telephony traffic migrates from the public switched network to the Internet, fewer users of the public network will remain behind to pay inflated interstate access charges and universal service obligations. Universal service will suffer greatly because far less financial support will be available for low-income consumers and residents of rural and high-cost areas across the country. The result will be a heightened disparity between telecommunications "haves" and "have nots" in this country.

Requiring VON services to pay their fair share of network interconnection charges will only put all telephony services on fair footing. In fact, a detailed study submitted in this proceeding concludes that, even with the addition of interstate access charges, Internet telephony service can potentially be priced competitively with traditional long distance services.

A number of parties support, and few parties even attempt to dispute, LDDS WorldCom's conclusion that computer-to-telephone and telephone-to-telephone VON services are basic telecommunications services. In addition, even if these VON services somehow are designated (incorrectly) as enhanced, the FCC still possesses jurisdiction over these and other enhanced services for the limited purpose of requiring the payment of interstate access charges

and universal service contribution.

As LDDS WorldCom explained in its comments, the Commission has several options to deal with the VON services problem, including (1) requiring VON services to pay cost-based network charges as part of comprehensive access reform and universal service reform, or (2) adding VON services and enhanced services to the current contribution pool for access and universal service. Both alternatives draw support from various commenters. The important point is for the Commission to act as soon as possible to correct the uneven rules under which the LECs now assess network charges to the public. Otherwise, the Commission will be faced with a far more serious and growing problem down the road.

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REPLY COMMENTS OF LDDS WORLDCOM

WorldCom, Inc., d/b/a LDDS WorldCom ("LDDS WorldCom"), hereby files its reply comments in response to the initial comments filed by other parties concerning the Petition for Declaratory Ruling, Special Relief, and Institution of Rulemaking ("Petition") filed by America's Carriers Telecommunication Association ("ACTA") on March 4, 1996 in the above-referenced proceeding.

I. INTRODUCTION

Commenters in this proceeding universally agree with LDDS WorldCom that the Internet, and in particular telephony voice services provided over the Internet, should not be subject to regulation or outright prohibition by the FCC. In its own initial comments, LDDS WorldCom strongly opposed subjecting Internet telephony services to common carrier-type regulation at this time, including the filing of tariffs or federal certification, as well as any Commission action that would restrict or prohibit entities from providing telephony over the Internet. The size and strength of the record in this proceeding demonstrates that ACTA's call

for such extreme measures should be rejected.

At the same time, few parties dispute, and many strongly support, LDDS WorldCom's position that, as a matter of fairness to consumers and of competitive equity, all users of the telecommunications network should be required to pay their fair share of the charges necessary to interconnect with the public switched telephone network ("PSTN"). In its initial comments, LDDS WorldCom explained that local exchange carriers ("LECs") should be required to assess Internet telephony services the same interstate access charges and universal service contribution that other telecommunications carriers are now required to pay, so that consumers and other end users of the public switched telephone network will not be adversely affected by uneconomic bypass of the network. Other parties commenting on this issue agree with LDDS WorldCom. Thus, the Commission must take whatever steps are necessary to immediately ensure that Internet telephony services contribute to important social goals by paying the same network interconnection charges that other long distance services must shoulder.

II. ALMOST ALL OTHER COMMENTERS AGREE WITH LDDS WORLDCOM THAT THE INTERNET, AND INTERNET TELEPHONE SERVICES, SHOULD NOT BE SUBJECT TO COMMON CARRIER-TYPE FEDERAL REGULATION

Nearly all commenters in this proceeding oppose ACTA's call for regulation of Internet telephony services, as well as its request that the Commission ban certain software products over the Internet.¹ In addition to the dozens of parties that filed paper comments with

¹ See, e.g., AT&T Comments at 2-3; Sprint Comments at 3-5; USTA Comments at 3-4; SWB Comments at 3-4; US West Comments at 3; Pacific Bell Comments at 4; NTIA Comments at 1; MFS Comments at 3; CompuServe Comments at 3; ITAA Comments at 3; VON Coalition Comments at 1; CIX Comments at 2.

the Commission opposing regulation or outright prohibition of Voice over the Net ("VON") services, several hundred more parties filed letters and informal comments electronically with the Commission taking the same position. Parties uniformly agree that regulating or banning certain services over the Internet would be completely unnecessary and counterproductive, and would have the effect of stifling the many benefits of the Internet to the public.

Only one commenter, TRA, joined ACTA in claiming that an entity holding itself out as a provider of Internet telephony must file federal tariffs and Section 214 applications with the Commission.² However, neither ACTA nor TRA offered any good reasons for such treatment of VON services at this time. LDDS WorldCom urges the Commission to reject that portion of the ACTA Petition which seeks to impose any tariff or Section 214 regulatory requirements on, or outright prohibition of, VON services.

The issue properly before the Commission is not new federal regulation of Internet-based services, or the Internet itself, but rather modified regulation of the LECs. The crux of the problem is that the LECs currently do not assess several types of federal charges, including interstate access charges and universal service contribution, on VON services that the LECs now assess on long distance companies. As LDDS WorldCom explained in its initial comments, the solution to this blatantly discriminatory and anticompetitive subsidization of VON services is relatively simple. As part of the Commission's comprehensive reforms of its access charge and universal service regimes, all users seeking to interconnect with local exchange networks to utilize telecommunications services -- including VON services -- must be required to pay cost-based access charges and a fair share of universal service contribution. By adding

² TRA Comments at 6.

VON services to the pool of telecommunications services that are subject to these federal charges, there will be no further reason for the Commission to take any regulatory measures regarding VON services.

III. THE RECORD DEMONSTRATES THAT INTERNET TELEPHONY SERVICES MUST BE REQUIRED TO PAY THEIR FAIR SHARE OF ALL PERTINENT INTEREXCHANGE SERVICE FEES, INCLUDING INTERSTATE ACCESS CHARGES, UNIVERSAL SERVICE CONTRIBUTION, AND INTERNATIONAL ACCOUNTING SETTLEMENTS, AS SOON AS POSSIBLE

A. Internet Telephony Services Are Rapidly Increasing In Popularity And Becoming Functionally Indistinguishable From Traditional Long Distance Telephone Services

Many commenters agree with LDDS WorldCom that, given the rapid pace of technological progress and deployment, Internet telephony services and traditional long distance services are quickly becoming interchangeable.³ For example, Southwestern Bell states that Internet telephony is "practically indistinguishable" from traditional long distance service,⁴ while ACTA observes that the sound quality of the current generation of Internet telephony services is quite comparable to traditional telephony service.⁵ As one recent article on VON services explains, "VON is rapidly emerging as a real alternative to traditional long distance...."⁶ Even NTIA, which believes (incorrectly) that Internet telephony currently is "still a limited and

³ LDDS WorldCom Comments at 5-10.

⁴ SWB Comments at 6.

⁵ ACTA Comments at 8.

⁶ "Voice Over The Net." X-Change, May-June 1996, at 42.

cumbersome capability," acknowledges that existing technology "may improve rapidly."⁷

Other commenters note the rapid increase in popularity of Internet telephony.⁸ One commentator describes the "explosive growth" of the service, and the fact that "market penetration is expected to skyrocket in the next few years."⁹ In fact, the VON Coalition indicates that there are now over one million users of VON services, and that wider distribution of software to millions of users in the near future will guarantee that use of VON services will "increase substantially."¹⁰

Several parties fearing government regulation of Internet telephony hasten to downplay its success, and attempt to show why VON services are not like traditional long distance services. Their primary argument is that use of VON services is difficult and cumbersome because both the originating and terminating ends of Internet telephony calls require a computer and compatible software set up at pre-arranged times.¹¹ Others claim that compelling federal interests are not involved at all because VON software does not connect the end user to the public switched telephone network in order to terminate Internet calls to a regular telephone.¹² Neither assertion is true.

⁷ NTIA Comments at 2 n.4.

⁸ ACTA Comments at 8-11.

⁹ "Voice Over The Net," X-Change, May-June 1996, at 42.

¹⁰ VON Coalition Comments at 4.

¹¹ NTIA Comments at 2 n.4; ITAA Comments at 7 n.30; VON Coalition Comments at 17; CIX Comments at 2-3; New Media Coalition Comments at 15 n.10; VocalTec/Quarterdeck Comments at 7; CPSR/Benton Comments at 6; Third Planet/Freetel Comments at 2; CDT Comments at 3-4

¹² VON Coalition Comments at 6, 13.

As LDDS WorldCom stressed in its initial comments, VocalTec's Internet Phone Telephony Gateway, which was announced in March 1996, allows voice communications to cross over from the Internet computer network to the public switched network.¹³ VocalTec issued a press release at the time (attached herein) which plainly describes the new product as enabling "real-time voice conversations for normal telephone users through the Internet to another local, long-distance or international telephone user."¹⁴ Calls using the Internet Phone Telephony Gateway can be placed from either a computer or telephone and received by a telephone at the other end.¹⁵ In addition, as indicated by the report filed in this proceeding by students of the Telecommunications Modeling and Policy Analysis Seminar at MIT, International Discount Telecommunications ("IDT") is also providing a computer-to-telephone VON service.¹⁶ IDT's press release (attached herein) describes how its new service "allows people to use their PC to make international phone calls over the Internet and communicate in real-time with people using regular telephones."¹⁷ One individual filing comments electronically also describes his actual use of one of these commercial computer-to-telephone VON services:

We have placed calls to a number of locations from our homes, over the worldwide Internet using commercially available software, from our personal computers. We have been able to connect to phones at

¹³ LDDS WorldCom Comments at 7.

¹⁴ See Attachment A (News Release, "VocalTec Introduces The Internet Phone Telephony Gateway Linking Traditional and Internet Telephone Networks," March 8, 1996, at 1).

¹⁵ Id. at 2.

¹⁶ MIT Students Comments at 13.

¹⁷ See Attachment B (Press Release, "IDT Announces Major Breakthrough That Will Allow Worldwide PC-to-Telephone Calls Over The Internet," October 23, 1995, at 1.

homes of other persons around the world who do NOT have PCs, and who received our calls on their ordinary phone instruments. We have done this without traditional long-distance phone-call charges....¹⁸

Thus, the VON Coalition is plainly wrong when it claims that "at present there is no commercial use of VON to connect to standard telephones that are part of the public switched telephone network."¹⁹ The record belies the veracity of that statement.

The commercial availability of computer-to-telephone and telephone-to-telephone VON services utilizing the PSTN is an extremely crucial point, one to which the Commission must devote special attention. Prior to the development of these newer VON services, rudimentary VON services were limited largely to services linking two computer aficionados who were not connected to the public switched telephone network. Now that the major advance of computer-to-telephone and telephone-to-telephone VON services has been reached in the past several months, consumers for the first time are able to place domestic and international telephone calls over the Internet, via either a computer or a telephone, to any telephone around the world, at the relatively minuscule cost of a local telephone line. No longer an esoteric, limited technology with little consumer appeal, VON service now stands on the brink of a huge mass market where, as one commentator puts it, "almost all telephones are accessible by the Internet...."²⁰ A recent article puts it bluntly: a service that now "allows Internet users to

¹⁸ Ed Tynan <tynan@chdasic.sps.mot.com>, RM No. 8775, dated May 7, 1996, at 1.

¹⁹ VON Coalition Comments at 13.

²⁰ "Telephony By Internet -- New Software Could Take Voice Service Beyond The PC Hobbyist," Global Telephony, June 5, 1996. Another article in that same publication notes that, as advanced VON services continue to unfold, "clearly it will become increasingly difficult ... to maintain the distinction between low-cost data calls and high-cost voice calls." "One Final Word -- Apocalypse Now? The Internet Could Make or Break Carriers," Global Telephony, June 5, 1996.

telephone non-Internet users.. suggests that the availability of Internet telephony could become reasonably ubiquitous in a very short period of time."²¹ As LDDS WorldCom argued in its initial comments, this brand-new marriage of Internet services and the public switched telephone network is the chief reason why the Commission needs to examine and remedy the inequitable cost structure underlying VON services in order to protect the public switched network from the significant and growing dangers of uneconomic bypass.

Finally, some parties insist that Internet telephony poses little or no threat to the public interest at this time.²² Ironically, perhaps the best answer comes from one group of Internet access providers (who should be in the best position to know) which characterizes ACTA's claim that Internet telephony is a threat to traditional long distance providers as "correct and irrelevant...."²³ As LDDS WorldCom described in its initial comments,²⁴ and discusses briefly below, the fact that VON services do not pay their fair share of network costs is in fact a very relevant threat to competition and to the public interest, one which the Commission must rectify at once.

B. The Public Interest Dictates That VON Services Must Pay Their Fair Share Of Applicable Cost-Based Interconnection Rates and Universal Service Contributions

Although Internet telephony is functionally and practically the same as traditional long distance services, nonetheless there is one chief difference between the two services at the

²¹ "Voice Over The Net," X-Change, May-June 1996, at 43.

²² ITAA Comments at 8; MIT Students Comments at 18.

²³ Netscape/Voxware/Insoft Comments at 26, 28.

²⁴ LDDS WorldCom Comments at 20-21.

present time: Internet telephony services currently do not pay the interstate access charges, universal service contribution, or international accounting rates to which traditional long distance services now are subject. As LDDS WorldCom explained in its initial comments, the FCC rules which allow this discriminatory subsidization, and create the resulting economic disparity between like telecommunications services, must be rectified promptly.²⁵

The major difference in pricing structures between VON services and traditional long distance services is not a trivial matter. A recent article puts it well:

Money makes the world go 'round.... [H]igh-volume users of telephony are quite price sensitive and will, in fact, sacrifice ease of use and/or quality of service to save a dime. To discount this behavior would be naive.... [T]he VON phenomenon is part of a larger restructuring of the communications market pie [because] VON offers the ultimate form of arbitrage -- it entirely bypasses traditional tariff structures.²⁶

Other parties agree with LDDS WorldCom. As many commenters explain, the current subsidized, and therefore "artificially low," pricing of Internet telephony services exploits the temporary ESP exemption from access charges in a discriminatory fashion and creates unfair competition.²⁷ As a result, parties state that true competition will suffer enormously should LECs not be required to impose on VON services their fair share of the federal charges necessary to interconnect with the local network. For example, AT&T remarks

²⁵ LDDS WorldCom Comments at 12-16.

²⁶ "Voice Over The Net," X-Change, May-June 1996, at 42. Pricing sensitivity is especially acute in the Internet community; for example, a recent article cites analysts who note that many information providers on the Internet "are struggling with users who are very enthusiastic until they are required to pay." See "MCI Tempers Internet Enthusiasm," Reuters America, Inc., May 31, 1996.

²⁷ TRA Comments at 7-8; SWB Comments at 6; Pacific Bell Comments at 8.

that long distance carriers have a "legitimate concern" that uneven application of access charge rules could distort the long distance market and encourage uneconomic bypass of the public switched network.²⁸ Sprint notes that the ability to avoid access charges gives Internet-based providers a significant financial advantage over traditional IXC's, and gives providers "regulation-induced financial incentive to use the Internet to provide basic voice service."²⁹ Over time, Sprint believes, this volume of traffic could increase greatly without the Commission's prompt correction of "arbitrage opportunities."³⁰

Commenters point out that Internet telephony services also currently avoid other legitimate fees and taxes,³¹ including foreign accounting rates.³² In particular, parties join LDDS WorldCom in advocating that Internet telephone services, which currently do not pay into the universal service system, contribute their fair share under the new Telecommunications Act of 1996.³³ In its recent comments in the FCC's universal service proceeding, LDDS WorldCom advocated adding VON services to the current contribution pool.³⁴

Commenters stress in particular that consumers will be severely harmed if VON services are not required to pay their fair share of charges to interconnect with the local

²⁸ AT&T Comments at 4.

²⁹ Sprint Comments at 2-4.

³⁰ Sprint Comments at 5.

³¹ ACUTA Comments at 2.

³² CIX Comments at 11 n.24.

³³ ACTA Comments at 22-24; Pacific Bell Comments at 10; NCTA Comments at 4.

³⁴ Comments of LDDS WorldCom, CC Docket No. 96-45, filed April 12, 1996, at 16; Reply Comments of LDDS WorldCom, CC Docket No. 96-45, filed May 7, 1996, at 15-16.

network. For example, USTA and Southwestern Bell state that VON services avoid contributing to the recovery of their interstate costs for using the PSTN, as other long distance telephony services are required to do; as a result, other users of telecommunications services, including residential customers, ultimately are paying higher rates in order to subsidize providers and users of VON services.³⁵ Payment of applicable charges is also necessary to maintain and expand the Internet network, and to maintain and upgrade the underlying telecommunications network infrastructure that supports all wireline communications.³⁶ Otherwise, as Pacific Bell states, the integrity of the PSTN for voice and others applications will be put at great risk.³⁷ As US West concludes, the "problem identified in the Petition is real" and requires "extremely rapid resolution" by the Commission.³⁸

The FCC must not underestimate the serious harm that will befall the public switched network, and all its users, should VON services continue to avoid paying access charges and universal service contribution.³⁹ Today the subsidy, and the resulting damage to other telecommunications users and providers, is limited only to what we now identify as VON services. As end users and carriers alike begin to realize the potentially enormous cost savings from using the Internet for voice traffic, however, more and more traditional telephony traffic will migrate from the PSTN to the Internet. Conversely, fewer and fewer users of the PSTN

³⁵ USTA Comments at 2-3; SWB Comments at 5.

³⁶ ACUTA Comments at 3; ACTA Comments at 24-27.

³⁷ Pacific Bell Comments at 10-11.

³⁸ US West Comments at 3.

³⁹ See LDDS WorldCom Comments at 20-21.

will remain behind to pay burgeoning interstate access charges and universal service obligations. Universal service will suffer greatly because far less financial support will be available for low-income consumers and residents of rural and high-cost areas across the country than is available today. In short, a deep and widening disparity of telecommunications "haves" and "have nots" is threatened to develop in this country in the very near future. Nothing in the new Telecommunications Act ever intended for the Commission to allow such a dire result.⁴⁰

Despite the lack of cogent arguments favoring the current free-ride arrangement for VON services, one group of Internet access providers claims nevertheless that, because "the Internet model is based on a pricing system incompatible with typical pricing structures for interstate telecommunications services," requiring ESPs to pay interstate access charges would make their VON services "extraordinarily uneconomic."⁴¹ In short, these commenters want to continue receiving implicit subsidies from other network users and service providers to support VON services indefinitely. These parties are certainly correct in one respect: the cost structure of VON services is indeed fundamentally incompatible with the cost structure of traditional long distance services. The cure is not to simply ignore these regulatorily-created distinctions, however, but instead to level them. Interestingly, calculations by the MIT Students directly dispute these commenters' claims that the payment of interstate access charges would make their services uneconomic; in fact, "Internet telephony can potentially be priced competitively with that of current PSTN long-distance services even with the addition of local

⁴⁰ Moreover, as bypass of the PSTN accelerates, it will be much more difficult for the FCC to step in and rectify the VON subsidy problem without causing so-called "rate shock" to millions of end users of the service.

⁴¹ Netscape/Voxware/Insoft Comments at 17-18.

access subsidy."⁴² MIT Students also estimated that adding interstate access charges to VON services "would become the largest single portion of costs to an IAP."⁴³ As a long distance carrier for whom interstate access charges comprise 45 percent of its total costs, LDDS WorldCom believes that all users of the local network should pay their fair share of cost-based interconnection rates and universal service contribution.⁴⁴

C. Reform Of The Federal Access Charge System And Universal Service Regime Are Clearly Well Within The FCC's Jurisdiction

The record shows little impediment to requiring the LECs to charge VON services cost-based interconnection charges, and requiring VON services to pay their fair share of universal service contribution. All commenters agree that software manufacturers, vendors, publishers, and providers are not telecommunications carriers, and thus are not within the FCC's regulatory jurisdiction,⁴⁵ because they do not transmit wire communications services to the

⁴² MIT Students Comments at 19. The MIT Students submitted a study in which they claim that the average price per minute of the Internet Access Provider ("IAP") model (computer-to-computer) is only 1 to 3 cents per minute, versus 22 cents per minute for traditional long distance service. Much of this difference is attributed to: (1) efficient use of bandwidth and compression savings; (2) sharing network through packet switching; and (3) lease of bulk lines. "Bypass" of interstate access charges is also cited as a significant factor. MIT Students Comments at 7-11.

⁴³ MIT Students Comments at 15.

⁴⁴ Indeed, if IXC's were not responsible for paying access charges, universal service contributions, and international accounting rates, LDDS WorldCom is confident that it would be able to compete effectively with VON service providers right now.

⁴⁵ AT&T Comments at 2; Sprint Comments at 3; TRA Comments at 6 n.8; SWB at 3-4; Pacific Bell Comments at 4; NCTA Comments at 2; MFS Comments at 4-5; NTIA Comments at 1; CompuServe Comments at 6-7; ITAA Comments at 3-6; CIX Comments at 6-7; New Media Coalition Comments at 5-6; Business Software Alliance Comments at 6-8; Netscape/Voxware/Insoft Comments at 19-22; CPSR/Benton Comments at 9-11; Third Planet/Freetel Comments at 2-3; ITIC Comments at 4-7; Millin Publishing Comments at 2-5; Cornell University Comments at 1; Software Industry Coalition Comments at 1.

public.⁴⁶ However, as TRA notes, the FCC has jurisdiction over voice services provided on a common carrier basis over the Internet because voice telephony is the same no matter the medium used.⁴⁷ Some commenters state that those who sell Internet telephony services to the public, such as Internet telephone service providers, are telecommunications common carriers and thus are subject to the FCC's jurisdiction.⁴⁸

In its initial comments, LDDS WorldCom showed that computer-to-telephone and telephone-to-telephone VON services are not enhanced services at all, but rather are basic telecommunications services.⁴⁹ Other commenters agree with LDDS WorldCom that VON service is properly classified as a basic,⁵⁰ or "adjunct to basic," service.⁵¹ More importantly, few commenters even attempt to dispute this conclusion. CompuServe claims that Internet telephony is an enhanced service, but only because the service supposedly employs advanced storage and forwarding capability in the server on a "near real-time" basis.⁵² Of course, this argument ignores the fact that many software providers openly claim that their VON services offer "real-time" communications capability to end users.⁵³ Thus, it is apparent that VON

⁴⁶ AT&T Comments at 3; Sprint Comments at 3.

⁴⁷ TRA Comments at 5.

⁴⁸ ACTA Comments at 15-18; Pacific Bell Comments at 5; NCTA Comments at 2-3.

⁴⁹ LDDS WorldCom Comments at 16-19.

⁵⁰ ACTA Comments at 18-20; ACUTA Comments at 2; BBN Comments at 3.

⁵¹ ACTA Comments at 20-21.

⁵² CompuServe Comments at 11-12.

⁵³ See, e.g., VocalTec/Quarterdeck Comments at 7 (Internet Phone provides "real-time, two-way, full-duplex conversations"); Attachment 1, at 1 (Internet Phone Telephony Gateway

services are not enhanced services, and should be required to pay access charges, universal service contribution, and international accounting rates under current law.

In addition, even if computer-to-telephone and telephone-to-telephone VON services somehow are designated as enhanced, the FCC obviously can still assert jurisdiction over these and other enhanced services for the purpose of requiring the payment of interstate access charges and universal service contribution.⁵⁴ Reform of the Commission's existing rules to clarify who must pay interstate access charges and universal service contribution obviously is well within the FCC's jurisdiction. Indeed, Southwestern Bell argues that ESPs now are in direct violation of the FCC's rules whenever they improperly use the ESP exemption to provide interstate telecommunications services, and that the Commission should enforce its rules against those providers.⁵⁵ US West also observes that Internet services traffic is interstate in nature.⁵⁶ LDDS WorldCom agrees.

As LDDS WorldCom explained in its comments, the Commission has several options to deal with the VON services problem. First, as part of comprehensive access reform and universal service reform, the Commission could require all interstate access providers and users, including VON services and enhanced services, to pay the same cost-based access and universal service rates. As an alternative, pending full reform of access charges and universal service, the Commission could act immediately by adding VON services and enhanced services

allows "real-time voice conversations"); Attachment 2, at 1 (IDT services provide Internet communications "in real-time....").

⁵⁴ ACTA Comments at 21-22.

⁵⁵ SWB Comments at 5-6.

⁵⁶ US West Comments at 2-3.

to the current contribution pool for access and universal service.⁵⁷ Several parties join LDDS WorldCom in urging the Commission to order cost-based access charges on an expedited basis.⁵⁸ Some commenters state that the FCC should address the elimination of the ESP exemption in its access charge reform and universal service proceedings,⁵⁹ while other parties argue that the "temporary" and "transitional" ESP exemption is no longer justified and should be eliminated now.⁶⁰ Even several parties submitting comments electronically, who otherwise strongly oppose FCC regulation of Internet telephony, support reform of the access charge system to rectify the fact that, despite the lack of functional difference between VON services and traditional long distance services, "the two technologies are not competing on equal terms...."⁶¹ Whatever action the Commission ultimately takes, one important principle must be preserved and applied: all users of the public telephone network must pay cost-based network interconnection charges in an equitable, nondiscriminatory, and competitively-neutral fashion.

Finally, many commenters argue that the FCC is powerless to act at all regarding VON services because no technical ability exists at the present time to distinguish digital voice

⁵⁷ LDDS WorldCom Comments at 15-16.

⁵⁸ AT&T Comments at 5; Sprint Comments at 4.

⁵⁹ AT&T Comments at 6-7; TRA Comments at 7; USTA Comments at 2; SWB Comments at 8; US West Comments at 3-4; NCTA Comments at 3-4.

⁶⁰ SWB Comments at 6-7; Pacific Bell Comments at 8-9, 14-16.

⁶¹ Lars Poulsen <lars@RNS.COM>, RM 8775, filed May 2, 1996, at 1; see also Jack Decker <jack@novagate.com>, RM 8775, filed May 5, 1996, at 5 (access charges paid by long distance companies should be "restructure[d]").

from non-voice applications.⁶² LDDS WorldCom submits that, even if this may be true (which at least one commenter strongly disputes),⁶³ this objection is not sufficient in itself to deter the Commission from acting to protect the public interest. Moreover, as indicated above, the Commission can decide to simply eliminate the ESP exemption, and so eradicate any remaining regulatory distinction between voice and data traffic. The "inability to separate" argument is a red herring and should be treated as such.

D. The Commission Must Take Action Now

The time is ripe for the Commission to rectify the disparate economic treatment of VON services and traditional long distance services. In fact, although Southwestern Bell is correct that a long-term solution to the VON services problem is "imperative,"⁶⁴ it may be, as AT&T believes, that the Commission needs to act before its access charge reform and universal service proceedings are completed within the next twelve months.⁶⁵

NTIA indicates that it would support investigating some form of FCC regulation of Internet telephony if the service develops "to an extent that raises concerns about harm to

⁶² Sprint Comments at 3-4; CompuServe Comments at 8-9; New Media Coalition Comments at 13; Microsoft Comments at 7; Netscape/Voxware/Insoft Comments at 17; CPSR/Benton Comments at 12-14; Third Planet/Freetel Comments at 8; BBN Comments at 3-6; CDT Comments at 4; Cornell University Comments at 2; NSF Comments at 1; Software Industry Coalition Comments at 3.

⁶³ See SWB Comments at 6 n.10 (ESPs should be able to identify communication over their networks initiated by standard telephones or servers, rather than by individual end users).

⁶⁴ SWB Comments at 8.

⁶⁵ AT&T Comments at 7.

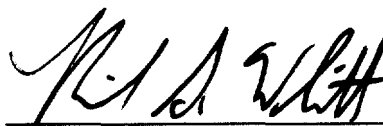
consumers or the public interest."⁶⁶ What LDDS WorldCom seeks here is not new regulation of VON services, however, but only modification of the uneven rules under which the LECs now assess charges to the public. This revision of current regulatory distinctions, so that all users of the public switched telephone network pay cost-based charges, will provide a straightforward remedy to a fundamental economic inequity that is now being caused by the disparate regulatory structure in the first place. Whatever means the Commission ultimately employs to arrive at a comprehensive solution, though, action must come as soon as possible in order to rectify a serious and growing problem that, if left alone, will only get significantly worse in the months ahead.

⁶⁶ NTIA Comments at 3.

IV. CONCLUSION

The Commission should act in accordance with the recommendations proposed above and in LDDS WorldCom's initial comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. R. Sloan", written over a horizontal line.

Catherine R. Sloan
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June 10, 1996